

Message

From: Marianne Engelman Lado [mengelmanlado@earthjustice.org]
Sent: 12/12/2016 8:12:44 PM
To: Dorka, Lilian [Dorka.Lilian@epa.gov]
CC: O'Lone, Mary [OLone.Mary@epa.gov]; Biffi, Betsy [Biffi.Betsy@epa.gov]; 'Zee, M. Andrew (CIV)' [M.Andrew.Zee@usdoj.gov]; Jonathan J. Smith [jjsmith@earthjustice.org]
Subject: Request for Findings Ashurst Bar/Smith (06R-03-R4)

Dear Lilian,

This email is submitted on behalf of complainants, the Ashurst Bar/Smith Community Organization (ABSCO). We believe that there is ample evidence in the existing record to support an immediate finding of discrimination with respect to the allegation that the Alabama Department of Environmental Management (ADEM) violated Title VI and EPA regulations when it failed to require the Tallapoosa County Commission to use the siting factors listed in the EPA June 2003 Title VI Investigation Report or to itself independently apply those factors in its permitting process, disproportionately impacting African American residents who live in closest proximity to the Stone's Throw Landfill. As we have previously indicated, ADEM steadfastly refuses to comply with Title VI. We copied you on our submission of comments filed on November 17, 2016 by Earthjustice and the NAACP Legal Defense & Educational Fund, Inc. on behalf of complainant Ashurst Bar/Smith Community Organization, which raise these concerns in the context of the current permit renewal process. OCR's investigation has now been pending since 2005 when it accepted ABSCO's complaint for investigation, and it is imperative that OCR complete its investigation and resolve the case. If the case is moving to voluntary compliance, we ask that complainants have input on any resolution. Otherwise, we ask that OCR immediately (or no later than the end of this calendar year) find that issuance of the permit amendment violated Title VI of the Civil Rights Act of 1964 and EPA regulations.

Complainants have scant information about the scope or status of the investigation, which hampers their ability to assist the investigation and have input into any potential resolution. The second purpose of this email, then, is to ask for more information about the status of the investigation. Specifically, complainants ask for the following information:

1. The current status of the investigation, including, specifically, whether the complaint is under investigation, whether OCR considers the investigation complete, whether the recipient has been approached about informal resolution, whether informal resolution negotiations are underway, and/or whether the case is in some other status and, if so, the nature of that status.

Complainants can appreciate that under OCR's Interim Case Resolution Manual, OCR has taken the position that in general, it may limit information about case investigation to complainants and recipients. See Interim Case Resolution Manual Section 4.2 (generally, OCR will not release its investigation plan to the recipient or complainant during the pendency of an investigation). These procedures, however, are not a bar to providing the requested information. Complainants also suggest that the equities in this case, given EPA's delay of more than a decade in conducting the investigation, lean strongly in favor of providing updated information to complainants.

Complainants can also appreciate that there may be confidentiality issues regarding some information shared in negotiations with recipients but, again, these should not be a bar to a good-faith effort by OCR to provide the information requested.

2. The current scope and subject matter of the investigation and, particularly, whether OCR is in fact investigating the allegation accepted in 2005.

3. Research or evidentiary gaps, particularly issues or gaps for which the complainants may be able to provide evidence or assistance. Again, communication about the issue raised by the investigation is particularly critical given the passage of time since the complaint was filed and accepted for investigation and the challenges that may pose for a thorough investigation.

4. If OCR is involved in discussions with ADEM about informal resolution, the status of any such negotiations. Complainants also seek the opportunity to have input on any recommendations or voluntary compliance measures during active discussions, before any resolution is near completion.

Please let me know when you might be available to discuss this email and information request, and, of course, please let us know if it raises any question or if we can provide clarification.

Sincerely,

Marianne

Marianne Engelman Lado

Senior Staff Attorney

Jonathan Smith

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Note: Starting January 1, 2017, I'll be launching a new environmental justice clinic at Yale Law School. Please feel free to reach me at Yale, by cell Ex. 6 Personal Privacy (PP) or by email, Ex. 6 Personal Privacy (PP)

Leah Aden

Senior Counsel

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